

REMARKS

Reconsideration and entry of the above amendments and these remarks are respectfully requested. Claims 1 and 6 have been amended. Claims 1-10 are pending in the application.

The Examiner objected to claims 1 and 6 for containing the limitation, “configured for” as language that suggest or make optional. The Examiner cites MPEP 2111.04 in making the objection. Applicant disagrees that “configured for” makes claim limitations optional. In fact, MPEP 2111.04 does not even mention “configured for” in the example of language that “suggest or makes optional”. Thus, the objection to the claimed recital of “is configured for” is respectfully traversed. The Examiner’s assertion that such language makes claim language optional is strenuously traversed as being contrary to well-settled law and existing Patent Office policy. First and foremost, the Examiner fails to cite a single authority that demonstrates the claimed “configured for” is in any way improper or that it should not be considered a positive limitation.

In contrast, attached as Exhibit A is a printout from the USPTO Website illustrating that over 213,000 U.S. Patents have issued specifying “configured for” in the claims.

It is well settled that there is nothing intrinsically wrong with use of functional language in a claim:

Applicant may use functional language, ... or any style of expression or format of claim which makes clear the boundaries of the subject matter for which the protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

MPEP §2173.01 at page 2100-213 (Rev. 3, Aug. 2005). (See also *In re Ludtke*, 169 USPQ 563 (CCPA 1971)).

Further, MPEP § 2173.05(g) “Functional Limitations” explicitly specifies at page

2100-221 (Rev. 3, Aug. 2005) that “[f]unctional language does not, in and of itself, render a claim improper.” (*Citing In re Swinehart*). MPEP §2173.05(g) also specifies that “[a] functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step.”

MPEP § 2173.05(g) also acknowledges the holding in *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976) that limitations such as “members adapted to be positioned” and “portions ... being resiliently dilatable whereby said housing may be slidably positioned” serve to **precisely define present structural attributes** of interrelated component parts of the claimed assembly.

The CCPA in *In re Venezia* addressed the specific issue of functional language in limiting the claimed structure: the Board had sustained a rejection under 35 USC §112, second paragraph, holding that functional language in the claim was directed to assembly to take place in the future, and that the claim recited no positive structural relationships. The CCPA reversed, stating that the claimed invention included structural limitations on each part and those structural limitations and were defined by how the parts are to be interconnected in the final assembly. *In re Venezia* at 151. The CCPA stated that the terms “adapted to be affixed”, “adapted to be positioned”, or “when said housing is in its repositioned location”, for example, define present structures or attributes of the parts identified, which limit that structure. *Id.* at 152. The CCPA further stated that there is nothing wrong in defining structures of the components of the completed assembly in terms of the interrelationship of the components, or the attributes they must possess. *Id.*

The Federal Circuit in *Pac-Tec Inc. v. Amerace Corp.*, 14 USPQ2d 1871 (Fed. Cir. 1990) affirmed a district court's finding of validity where functional language was deemed as a structural limitation. The district court found, when considering the claims as a whole, functional language such as “adapted to”, “whereby”, and “thereby”, for example, constitute structural limitations, citing *In re Venezia*, and that functional language cannot be disregarded in such cases. *Pac-Tec. Inc.* at 1876.

Hence, the recitation of "configured for" is an appropriate recital that helps define a particular capability or purpose that is served by the recited element or step. For these and other reasons, the objection should be withdrawn.

Claims 1-10 stand rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,988,161B2 to McConnell et al. Claims 1 and 6 have been amended to define the invention more clearly and thus, obviate the rejection. In particular, claim 1 as amended recites, "receiving a link management packet from a link partner and in response selecting, according to InfiniBand™ protocol, a selected active link width of a physical link". Claim 6 as amended recites, "a memory that stores port configuration settings, including a selected active link width of a physical link".

The specification explicitly distinguishes between virtual lanes and link widths by specifying that the link width refers to the width of the actual width of the physical interface link (see also page 4, lines 4-11).

Thus, in view of the claims as amended, the claimed "link width" cannot be so broadly construed as to encompass the *virtual lanes* (VLs) of McConnell et al., because the claimed width is of a physical link.

Furthermore, in response to Applicant's previous arguments with regard to McConnell et al., the Examiner contends,

...one of ordinary skill in the art will interpret that the port depicted in fig. 6 combines/multiplexes virtual lanes to be transmitted. Hence, the examiner re-asserts that the McConnell reference describes the multiplexing means (multiplexer).

Applicant submits that the port in Fig. 6 of McConnell et al. does not combine/multiplex virtual lanes, it is the InfiniBand™ protocol that does. As described at page 5, lines 13-16 of the specification, multiplexing virtual lanes on a single port is well known in the InfiniBand™ architecture. This is not what is being claimed. For example, claim 1 recites setting a multiplexer circuit to the selected link width.

Numerous variations may be implemented for responding to a link management packet, including implementing multiple link transceivers having respective data rates, where only one of the link transceivers is selected based on the corresponding link width specified in the received link management packet; hence, if a link management packet specifies a "'4x" link width, one possible implementation would be for the channel adapter to enable the "4x" transceiver and disable the remaining transceivers (e.g., the "1x" transceiver and the "12x" transceiver). See, for example, column 14, lines 10-16 of McConnell et al.

In contrast, each of the independent claims specifies the multiplexer circuit configured for “selectively *switching* frame data of a prescribed maximum link width”. As described in the specification, the “switching” in the multiplexer of Figure 3 includes not only transfer of data, but transfer of the data according to the appropriate width, and the appropriate sequence for transmissions using link widths smaller than the prescribed maximum link width.

With regard to claims 2 and 7, there is simply no teaching in McConnell et al. of first and second multiplexer circuits as claimed. The Examiner mentions “multiplexing means (circuit)” of Fig. 6 of McConnell et al. but cannot identify first and second multiplexer circuits in McConnell et al. since no such circuits are shown or described. Therefore, the rejection is improper and should be withdrawn. Anticipation cannot be established based on a piecemeal application of the reference, where the Examiner picks and chooses isolated features of the reference in an attempt to synthesize the claimed invention. “Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). Hence, it is not sufficient that a single prior art reference discloses each element that is claimed, but the reference also must disclose that the elements are arranged as in the claims under review. *In re Bond*, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990) (citing *Lindemann Maschinenfabrik GmbH*).

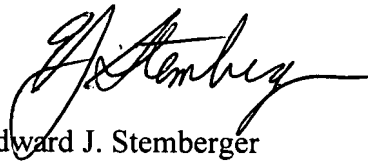
Accordingly, the rejection of claims 1 and 6, and the claims that depend therefrom, should be withdrawn because it fails to demonstrate that the applied reference discloses each and every element of the claim. See MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). "Anticipation cannot be predicated on teachings in the reference which are vague or based on conjecture." *Studiengesellschaft Kohle mbH v. Dart Industries, Inc.*, 549 F. Supp. 716, 216 USPQ 381 (D. Del. 1982), *aff'd.*, 726 F.2d 724, 220 USPQ 841 (Fed. Cir. 1984).

In view of the above, it is believed this application is in condition for allowance, and such a Notice is respectfully solicited.

To the extent necessary, Applicant petitions for an extension of time under 37 C.F.R. 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including any missing or insufficient fees under 37 C.F.R. 1.17(a), to Deposit Account No. 50-0687, under Order No. 95-520, and please credit any excess fees to such deposit account.

Respectfully submitted,

Manelli Denison & Selter, PLLC

A handwritten signature in black ink, appearing to read 'E. Stemberger', with a stylized flourish at the end.

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EXHIBIT A

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ACLM/"configured for"

- | PAT.
NO. | Title |
|------------------------------|---|
| 1 7,246,372 | T Portable device and a method for accessing a computer resource of a temporary registered user |
| 2 7,246,368 | T Cable plant certification procedure using cable modems |
| 3 7,246,367 | T Synchronized service provision in a communications network |
| 4 7,246,366 | T System and method for automatically determining service groups in a subscriber network |
| 5 7,246,362 | T Optical disk drive allowing for horizontal or vertical installation |
| 6 7,246,360 | T Plug-in API for protocol and payload transformation |
| 7 7,246,359 | T Methods, systems and computer program products for maintaining association integrity of enterprise JavaBeans (EJB) during EJB passivation and reactivation |
| 8 7,246,355 | T Device and method for initializing an applicative programme of an integrated circuit card |
| 9 7,246,349 | T Migration support mechanism in open service and open mobile architecture |
| 10 7,246,347 | T Method and apparatus for loading class files into non-volatile memory |
| 11 7,246,346 | T System and method for persisting dynamically generated code in a directly addressable and executable storage medium |
| 12 7,246,345 | T Method and apparatus for partitioning of managed state for a Java based application |
| 13 7,246,333 | T Apparatus and method for unified debug for simulation |
| 14 7,246,328 | T Method, computer program product, and system for performing automated linking between sheets of a drawing set |
| 15 7,246,318 | T Application programming interface for utilizing multimedia data |
| 16 7,246,316 | T Methods and apparatus for automatically generating presentations |